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ABSTRACT

This document is a guide to the immigrant student's legal right of access to public schools based on the 1982 United States Supreme Court ruling in "Plyler v. Doe" (457 U.S. 202). Following an introduction, the first of three sections, "School Practices," addresses everyday school practices by outlining prohibited and recommended practices concerning registration, documentation, verification, relations with the Immigration and Naturalization Service, staff training, the need for regulations and rumor control, along with recommended actions for state and local election agencies. The second section, "The Right of Access," addresses the Plyler ruling itself and the legal reasoning behind it. The third section, "Parents and Advocates," addresses the role of parents and community members in insuring that schools abide by and respect the Plyler rights of immigrant students. This section contains supplements on foreign student status and relevant search and seizure legislation written to provide more in-depth legal information. In certain parts of the first two sections, statements of principles address the specific issues at hand, while a later portion of the text presents the legal justification of the principle. This format enables readers to choose the level of analysis they wish to pursue. Included is a table of cases, endnotes, an appendix of sample materials, and an eight-item bibliography. (JB)

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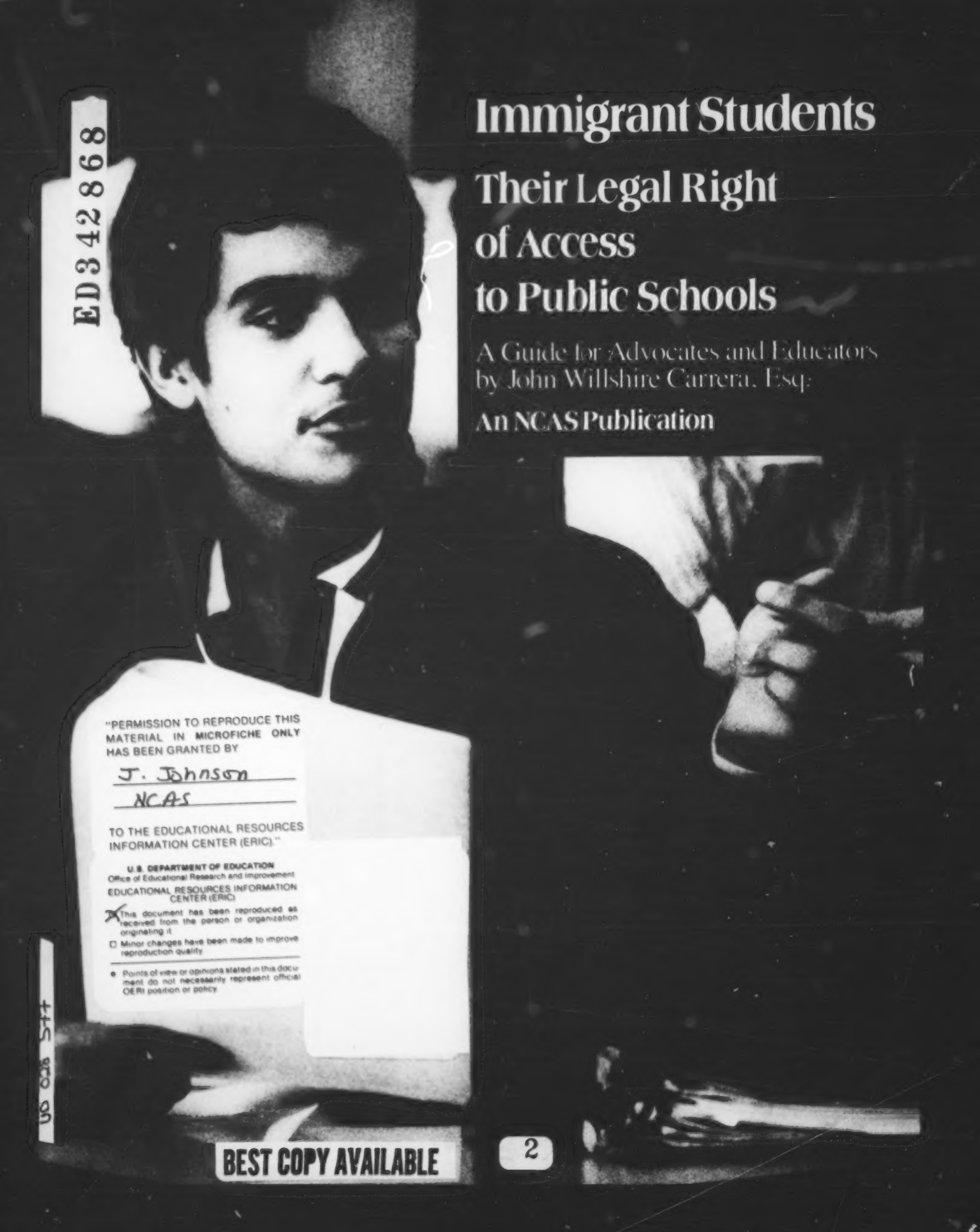
Immigrant Students

Their Legal Right of Access to Public Schools

A Guide for Advocates and Educators
by John Willshire Carrera, Esq.

An NCAS Publication



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Immigrant Students:

Their Legal Right of Access to Public Schools

A Guide for Advocates and Educators

by
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A publication of

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NCAS

The National Coalition of Advocates for Students (NCAS) is a network of experienced child advocacy organizations that work on public school issues at the federal, state and local levels. It is the only national coalition that works full time on these issues.

NCAS member groups have developed, through experience in their own communities, a common perspective about children and schools. They share a commitment to public education, to maximum student access, to appropriate educational experiences, and to state and local advocacy as a constructive approach to school improvement.

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Introduction

"Immigrant children bring a wealth of riches to our schools. They come with optimism, energy, and a variety of skills which will make a vital contribution to our nation's future. We will all benefit by the preservation of their strengths which are too often converted into vulnerabilities in the classrooms of our schools."

Justice Cruz Reynoso (Ret.), California State Supreme Court

In 1982, the Supreme Court ruled in Plyler v. Doe, 457 U.S. 202 (1982)*, that public schools were prohibited from denying immigrant students access to a public education from Kindergarten through grade 12 on the basis of their immigration status. More specifically, the Court found that undocumented children[1] and young adults have the same right to attend free public primary and secondary schools as their U.S. citizen and permanent resident counterparts. As such, states and the public schools in each state are prohibited from enacting or adopting laws, regulations, or practices which deny or result in the denial of this right.

In addition to their Plyler right of access, under state law, both documented and undocumented immigrant students are obligated, as are all other students, to attend primary and secondary schools until they reach a mandated age. Conversely, states are obligated to enforce these laws with regard to immigrant students, as with U.S. citizens and permanent residents.

As such, public schools and public school personnel are prohibited under Plyler from adopting policies or taking any action to deny or which results in the denial of the right of access to resident immigrant students on the basis of their immigration status, and in particular, undocumented students on the basis of their undocumented status.

School policy should make it clear to all school personnel that as educators, their primary responsibility is to provide all of their students who are residents of their community with a quality education. As educators, they should not be involved in any policing activities for INS, nor are they under any legal obligation to do so. Schools are in the business of educating students and INS is in the business of enforcing federal immigration laws.

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* 102 S.Ct. 2382, 72 L.Ed 786

The need for this affirmative policy was clearly expressed by former New York City Public School Chancellor Nathan Quinones at a public hearing in 1986:

> "We have to give a clear message that we are not arms of enforcing [immigration law]...we are not the enactors of it and we are not the agents of the federal government in carrying it out."

MESSAGE TO THE READER

The following manual has been written to address prohibited and recommened Plyler right of access practices for educators, advocates and school lawyers. To address their need for different types of information relative to the Plyler right of access for immigrant students, the manual has been both divided into different sections and written, in certain sections, on two different levels.

Section I, entitled School Practices, is written to address everyday school practices. It outlines prohibited and recommended practices. Section II, entitled The Right of Access, is written to address the Plyler right of access itself and the legal reasoning behind it. Section III, entitled Parents and Advocates, is written to address the role that parents and community members need to play to insure that schools abide by and respect the Plyler rights of immigrant students. The supplements are written to provide more in-depth legal information for readers who desire a deeper understanding of the law as it affects nonimmigrant students in the U.S. on F-1 and M-1 visas and the law concerning searches and seizures in this context. Finally, the last supplement includes several regulations and policy statements recently issued by the New York City School Department which may serve as models for advocates in other school districts.

In certain parts of the first first two sections, the text includes statements of principles which address the specific issues at hand. This is addressed to the reader who is simply looking for a guide on these issues. However, for the reader who desires or needs to understand the legal reasoning behind the principle, a second section is included which presents a legal justification for the stated principle. This format has been adopted to enable readers to choose the level of analysis they wish to pursue at any time.

Finally, this manual has been written for the practitioner. Each section has been carefully researched and represents our interpretation of the law in this area.

I. School Practices

"Because of this ruling [Plyler v. Doe], school officials may not require children to prove they are in this country legally, through such evidence as green cards, citizenship papers, etc. They may only require proof that the child lives within the attendance zone of the school, just as they might for any other child. Rent receipts or utility bills showing the home address should constitute adequate proof."

> *The Rights of Students:* American Civil Liberties Handbook; Janet Price, Alan H. Levine and Eve Cary; Revised Ed., 1988. Carbondale: Southern Illinois University Press.

"Today, education is perhaps the most important function of state and local governments...[I]t is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms."

> Brown v. Board of Education, 347 US 483, 493 (1954).

A. ENTITLEMENT TO EQUAL EDUCATIONAL OPPORTUNITIES

1. Are Immigrant Students Entitled to Equal Educational Opportunity?

Although the Constitution does not expressly provide students with the right to a public education nor has the Supreme Court to date found such a right in the Constitution, the Court has found education to be a semi-fundamental right for undocumented students. The Supreme Court has also consistently depicted education as playing a fundamental role in maintaining the fabric of American society and has held that once a state undertakes to provide educational opportunities, these become a right which must be made available to all students on equal terms.

Analysis

The Constitution does not expressly provide students with a right to a public education. Nor has the Court to date found such a right in the Constitution. San Antonio Independent School District v. Rodriguez, 411 U.S. 1, 35 (1973). It has, however, in Plyler, held education to be a semi-fundamental right in particular situations under the Fourteenth Amendment's Equal Protection Clause.

The Court in Brown v. Board of Education, 347 U.S. 483 (1954) clearly enunciated the principle that all children are entitled to equal educational opportunities. It held that all primary and secondary students have an equal right to all educational opportunities made available by the state. Once a state undertakes to provide educational opportunities, they become a right which must be made available to all students on equal terms.

B. REGISTRATION, DOCUMENTATION, AND VERIFICATION REQUIREMENTS

1. Which school practices are prohibited?

During initial enrollment and at all other times, schools are prohibited from denying immigrant students admission on the basis of their undocumented status. They are also prohibited from treating undocumented students disparately for residency determination purposes on the basis of their undocumented status. Finally, because any inquiries about a student's immigration status or requests for documentation which might expose a student's undocumented status will have the affect of "chilling" their right of access, these inquiries are also in all likelihood prohibited.[2]

Analysis

Prohibited school practices include:

(a) barring access to a student on the basis of his/her undocumented status or his/her alleged undocumented status;

(b) treating a student disparately for residency determination purposes on the basis of their undocumented status;

(c) inquiring about a student's immigration status, including requiring documentation of a student's immigration status, during initial registration and at any other time for:

- admission and intake determination purposes;
- any reason other than admission and intake determination purposes.

(d) making inquiries from a student or his parents which may possibly expose the undocumented status of the student or the parents;

(e) requiring Social Security numbers of all students which will have the effect of exposing the immigration status of undocumented students or their parents; students without Social Security numbers should be assigned a school generated number instead;

> Under very carefully restricted and monitored situations, an exception may be made when it comes to asking and documenting a student's country of origin.[3]

2. How should a school handle requests for documentation by federal education organizations?

Schools should solicit voluntary information from parents and students or find alternative ways of identifying and documenting the eligibility of students.

Analysis

Schools receiving supplemental federal funding to provide educational services to immigrant students under the following programs:

(a) the Emergency Immigrant Education Program;

(b) SLIAG Funds (Section 204 of IRCA);

(c) the Transitional Program for Refugee Children;

are required to document the eligibility of each student receiving services paid for by these programs. However, schools are not required by the controlling statutes or regulations to check or document the immigration status of each student in the school or of those students who appear to be eligible.

The regulations are very clear in the following areas:

- alien registration numbers are neither required nor solicited;
- documentation of immigration status is neither required nor solicited;
- schools are not required to obtain documentary evidence of the student's eligibility from the student or the child's parent or guardian, the information may be based on credible information from any source, including information contained in previous school records;

- the Emergency Student Program does require documentation of a student's country of origin and the period when the student entered the school for the first time;

- the Transitional Program does require documentation that a student is a refugee as defined by the Refugee Act of 1980, his or her country of origin, and date of arrival.

Emergency Immigrant Education Program
(34 CFR Section 581.51 [1987])

How is the eligibility of an immigrant child determined?

(a) In determining eligibility, an SEA may rely on credible information from any source, including information contained in previous school records and information provided by the child or the child's parent or guardian.

(b) An SEA is not required to obtain documentary evidence of the child's civil status from the child or the child's parent or guardian.

Transitional Program For Refugee Children
(34 CFR Section 538.21 [1987])

How is the number of eligible children determined?

(a) On a date specified by the Secretary through a notice published in the Federal Register, an SEA shall count the number of eligible children enrolled in public and nonprofit private schools in each LEA.

Schools, in the past, have occasionally requested information in a manner that was "chilling" to undocumented student's right of access. As such, schools must be very vigilant, under Plyler, in refraining from requesting information from students and their parents which will directly or indirectly lead them to fear exposure of their undocumented status and thus lead to the denial of their Plyler right of access to schools.

Schools receiving these funds should adhere to the following guidelines when collecting this information:

- school personnel should be informed of undocumented students' Plyler right's and the manner in which even unintentional requests for information concerning a student's or their parent's immigration status

or for information which may lead to their exposure as undocumented persons may in fact lead to a 'chilling' of their rights; schools should formalize their understanding of these rights and school personnel's affirmative duty to refrain from activities which breach Plyler;

- school personnel may solicit voluntary written verification to ascertain whether a student qualifies for programs, such as country of origin and so forth; schools should refrain from asking individual students or their parents to clarify or to document their status, whether they qualify or not; either request would violate undocumented students Plyler rights; schools should not require staff to verify these determinations by asking students or parents directly;

- schools should be vigilant for unintentional attempts to document eligible students which lead to the possible 'chilling' of their Plyler rights;

- schools should limit information taken for documentation purposes to all but the essentials; schools should not record alien registration numbers or other very specific alien immigration status information which would force undocumented students to expose their lack of legal status;

- schools are prohibited under the Family Educational Rights and Privacy Act (FERPA) and state privacy acts from providing any outside agency, including the Immigration and Naturalization Services, with all such recorded information without getting permission from the student's parents or without a valid warrant; it must be remembered that even the act of requesting such permission from undocumented parents for release to an outside agency, particularly the INS, will have the effect of 'chilling' the students' Plyler right of access and thus constitute a prohibited practice.

It is recommended that schools address this documentation requirement by informing all parents and students that the school receives funds under these programs and asks that eligible children voluntarily come forward on their own while at the same time guaranteeing privacy of this information.

3. Can schools require Social Security numbers of immigrant students and parents as a prerequisite for admission?

Undocumented students and undocumented parents are not eligible for Social Security numbers. As a result, any school which requires Social Security numbers as a prerequisite would be denying all undocumented students the right of access in direct violation of Plyler v. Doe.

Analysis

Undocumented persons, since they have never been granted employment authorization by INS, are not eligible to be assigned a Social Security numbers (See 20 CFR 422.104, 422.105). As a result, an undocumented student or parent will not be able to comply with any requirement that a student or parent present a Social Security number or show that he or she has applied for a Social Security number for school registration purposes, the effect of which would be the violation of the student's Plyler right of access. Any such requirement may also be in violation of the Privacy Act.

4. Can schools require students to apply for Social Security numbers if they don't already have one?

Schools should refrain from requiring students to apply for Social Security numbers. Should schools decide to pass out Social Security registration forms in an attempt to assist the Social Security Administration (SSA), they must inform both students and their parents in appropriate languages that the application forms are being handed out solely as a service to parents who intend to claim their children as dependents for tax purposes. Further, schools should be clear that it is up to the parents and students as to whether the applications are actually filed and schools will not monitor the filing of these applications.

Analysis

The Tax Reform Act of 1986 requires that in order for a person to be claimed as a dependent for tax purposes--in this case children who will be the age of five or older by the end of the tax year--they must have a Social Security number and it must be listed in the return. In turn, the SSA, in an effort to assist parents who intend to list their children as dependents, has requested that all schools assist in this effort by passing out Social Security registration forms in schools. Registration for Social Security numbers has not been made mandatory. It is completely voluntary in this situation.

Schools or school personnel in a number of states, however, have occasionally interpreted this request for assistance as a prerequisite for attendance or a prerequisite for services. In a number of instances, parents have also received the incorrect impression that their children must register.

Since any such requirement or perceived requirement will have the effect of 'chilling' the Plyler rights of all undocumented students, these practices should be carefully monitored and prohibited where such 'chilling' takes place.

"As you are aware, the Social Security Administration (SSA) has requested that all schools assist the Federal Government in obtaining Social Security numbers for children claimed as dependents for federal income tax purposes."

"It has come to my attention, however, that some parents are under the impression that children must register with SSA in order to attend public school. That is not the case. The SSA registration process is only to assist parents in later claiming their dependent children on tax returns. It is completely voluntary. This issue has been of particular concern to the parents of undocumented aliens who are afraid that their children will not be allowed to attend school. As I advised in my memo of April 30, 1986, all children are required to attend school in California, regardless of immigration status."

"It is therefore advisable to clearly indicate to parents receiving SSA registration forms that registration is voluntary. If registration forms have already gone home, efforts should be made to advise parents that failure to register with SSA will not prevent their children from attending school."

July 30, 1987 Memorandum to County and District Superintendents from William Honig, California Superintendent of Public Instruction.

5. Are immigrant students eligible for free lunch and breakfast under the School Lunch Act if the parents and other household members are unable to present Social Security numbers?

In order to qualify for the Free School Lunch program, all applicants, including immigrant parents, are required to furnish either of the two following types of information, in addition to household income and names of all household members, on the required application form for each of the household members over the age of 21[4]:

- **Social Security numbers of all household members over the age of 21, should they have one;**
- **for all household members above the age of 21 who fail to have a Social Security number, an indication on the application that he or she does not possess one.[13]**

Analysis

The applicable federal regulations for the National School Lunch program state that all household members above the age of 21 must list their Social Security numbers on the application, or, if they don't have a Social Security number, they must so indicate:

> "'Documentation' means the completion of the following information on a free and reduced price application: ...(2) Social Security number of each adult household member or an indication that a household member does not possess one." [7 CFR Section 245.2(a-4)]

> "The application shall require applicants to provide the names of all household members, and the Social Security numbers of those household members 21 years of age or older or an indication that a household member does not possess one." [7 CFR Section 245.6(a)]

A third section of the regulations requires the application to include a statement--in cases where the household does not receive food stamps or AFDC--that all adult household members who have Social Security numbers are required to list their Social Security numbers and that failure to do so will result in a denial of the application. It does not address the case of those individuals who do not have Social Security numbers. It further states that Social Security numbers are required only for income and other information verification purposes and not to check for legal immigration status:

> "(1) Section 9 of the National School Act requires that, unless you provide a food stamp or AFDC case number for your child, you must provide the Social Security numbers of all adult members of your household in order for your child to be eligible for free or reduced price meals. Provision of these Social Security numbers is not mandatory, but failure to provide numbers will result in a denial of the application for free or reduced-price benefits.... The Social Security numbers may be used to identify household members in carrying your efforts to verify the correctness of information stated on the application." [7 CFR Section 245.6(a)(1)]

The applicable section of the National School Lunch Act addresses this issue in a similar manner:

> "(d) Social Security numbers of the members of the household to be furnished for eligibility for free or reduced-price lunches:
>
> (1) The Secretary shall require as a condition of eligibility for receipt of free or reduced-price lunches that the member of the household who executes the application furnish the Social Security account numbers of all adult members of the household of which such person is a member.

(2) No member of a household may be provided a free or reduced-price lunch under this chapter unless:

(a) appropriate documentation, as prescribed by the Secretary, of the income of such household has been provided to the appropriate local school food authority;"

6. How should a school handle immigration related identification voluntarily submitted by students or parents?

Should a parent or student, for whatever reason, volutarily offer an INS generated document--such as a passport, green card, or I-94--for identification purposes, the school should take special care to refrain from recording:

- **any personal identifying information from the document;**
- **information concerning the type of document submitted;**
- **that an INS generated document was submitted.**

The school should only record that personal identification was presented.

7. How should a school handle any information incorrectly collected?

Should the school, for whatever reason, come across information regarding the immigration status of students or their parents, it is prohibited under the Family Educational Rights and Privacy Act (FERPA), otherwise known as the Buckley Amendment, and state privacy acts from providing any outside agency, including the Immigration and Naturalization Services, with all such personally identifiable information without first getting permission from the student's parents or a valid court order. Since, however, even the request for permission would have the affect of "chilling" the students Plyler right of access, this too would constitute a prohibited practice.

Analysis

FERPA mandates that schools which receive federal funds are prohibited from disclosing personally identifiable information from the records of its students without first obtaining a written consent of the parents. Although there are exceptions to this requirement, an unsubpoenaed request by INS is not among them:

> "No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a) of this

> section) of students without the written consent of their parents to any individual, agency or organization, other than to the following..." [20 U.S.C. Section 1232g(b)(1)]

For the purposes of FERPA, "personally identifiable" is defined as:

> "...data or information [that] includes: (a) the name of a student, the student's parent, or other family member; (b) the address of the student, the student's parent, or other family member; (c) a personal identifier, such as the student's Social Security number or student number; (d) a list of personal characteristics which would make the student's identity easily traceable: or (e) other information which would make the student's identity easily traceable." [34 C.F.R. Section 99.3]

As such, the disclosure of any information relating to the immigration status of any student or his or her parents which is attached to other information which would make the student's identity traceable, is prohibited by FERPA. FERPA does allow for the release of personally identifiable information if:

> "(a)there is written consent from the student's parent specifying records to be released, the reasons for such release, and to whom, and with a copy of the records to be released to the student's parents and the student if desired by the parents, or
>
> (b) such information is furnished in compliance with judicial order, or pursuant to any lawfully issued subpoena, upon condition that parents and the students are notified of all such orders or subpoenas in advance of the compliance therewith by the educational institution or agency." [20 U.S.C. Section 1232g(b)(2)]

Any such request for consent to release information concerning the status of immigrant students either by the schools or by INS would undoubtedly result in the denial of the affected student's Plyler rights and/or the 'chilling' of the rights of other immigrant students attending the school or school district. As such, this should be considered prohibited.

Although FERPA allows for the release of 'directory information' from student files without requiring prior parental consent, since the type of information discussed here does not fit into that category, schools must never release it as such. Parents and advocates are advised to monitor schools on this issue. Should a school ever fail to comply with FERPA, the Act itself provides a mechanism to ensure compliance. Such action under FERPA includes withholding federal funds to a school should a voluntary means of securing compliance be ineffective.

C. RELATIONSHIP WITH INS

1. Are communications with INS which have been initiated by school personnel concerning specific students allowable?

Any communication to INS initiated by a school or school official concerning a specific student should be prohibited. The communication may: (1) unconstitutionally deny an undocumented student his or her Plyler right of access; (2) 'chill' the right of access of other undocumented students in the school district; and (3) result in exposing the student and his or her family to INS deportation. Any such communication, without the uncoerced consent of a student's parents will also result in a violation of FERPA.

> School personnel should refer immigrant students and parents with questions about their immigration status to legal service organizations, immigrant rights organizations, or local immigration attorneys. Above all, they should refrain from as advising immigrants to go directly to INS offices without first getting proper advice from a lawyer or immigrant rights advocate.

2. How should schools handle requests for information by INS?

(A) School personnel should be prohibited from cooperating with INS in any manner that jeopardizes or could very possibly jeopardize immigrant students' Plyler right of access. As such, any request by INS for information concerning specific students or to determine if undocumented students are attending a school or a school district should be carefully documented and communicated to the school principal, with the exception of the administration of F-1 and J-1 visas (see Supplement I).

The principal should in turn deny the request and inform the INS that such information can only be released upon the presentation of a valid subpoena. Compliance with such requests will very possibly result in denying some or all immigrant students in a school or school system their right of access under Plyler and their rights under FERPA and the applicable state privacy act. It may also expose the students and their families to INS resulting in their deportation. These practices should be incorporated into formal school policy and frequently communicated to all school personnel.

Analysis

Such communication may: (1) have the effect of unconstitutionally 'chilling' or even denying students' Plyler right of access; (2) 'chill' the right of access of other undocumented students in the school district; and (3) result in exposing the students and their families to INS deportation. Any such communication, without the uncoerced consent of a student's parents may also result in a violation of FERPA.

Any cooperation between a school and the INS--with the exception of the administration of F-1 and J-1 visas (see Supplement I)--or any surveillance and policing activities conducted by INS in or near schools, has the effect of "chilling" the undocumented student's right of access to an education and should therefore be prohibited.

(B) If the school is subpoenaed by the INS to produce information on immigrant students for the above stated reasons, the principal should be immediately informed of the subpoena and he or she should immediately contact an attorney--i.e. school attorney, state department of education legal department, town counsel, city law department, immigrant rights or civil rights attorney.

Only upon advice of an attorney should the principal comply with the subpoena. Should the requested information be submitted without properly checking into the validity of the subpoena and without carefully taking into consideration the rights of the immigrant students and their parents, the school and the principal will be exposing themselves to risk. If the principal refused to comply, he or she and the school may have to go to court. At this point, however, a lawyer might be able to negotiate a settlement that would be less disruptive to students, their parents and the school. The INS should not be able to penalize the school and the principal for the delay.

Analysis

For the reasons listed above, school personnel should be prohibited from producing subpoenaed information on immigrant students for INS without first getting competent legal advice. To do otherwise, will, aside from jeopardizing the immigrant students and their Plyler rights, expose school personnel and the school to liability for their actions.

3. How should schools handle requests by INS to enter a school to search for information or seize immigrant students?

School personnel should be prohibited from cooperating with INS in any manner that jeopardizes or could very possibly jeopardize immigrant students and their Plyler right of access. As a result, any request by INS for consent to enter a school to search for information or to seize students should be immediately conveyed to the school principal. The school principal should meet the INS officials in the front office with a credible witness present, deny the INS officials consent, and request to see a legal warrant.

(A) Should the INS official not be carrying a warrant, the principal should inform the officer that unless INS presents the school with a legal search or arrest warrant, INS will not be allowed into the school. The INS official may push to be admitted without a warrant. The principal must be firm. Unless the principal insists, he or she will give up one of the strongest safeguards for protection of the school and the immigrant student. The principal should then immediately contact a lawyer--i.e. school attorney, immigrant rights or civil rights attorney--and document the encounter.

(B) Should the INS official be carrying a warrant, the principal should ask to see it and inspect it very carefully. If the warrant is for search and/or seizure of students, it should at the very least:

- list the school by its correct name and address;
- list students by name;
- be signed by a judge or magistrate;
- be less than ten days old;
- be served by an INS officer with proper identification.

To protect other immigrant students in the school and their Plyler rights, upon being convinced of the validity of the warrant, the principal should bring the INS officials to his/her office, and request that they remain there while the named students are brought to them. The principal should immediately inform the school superintendent of the request and contact an attorney--i.e. school attorney, immigrant rights or civil rights attorney--for legal advice. At the same time, the principal should ask that the named children, and only those named, be located and asked to wait in a safe room while legal advice is being solicited. Only upon the advice of an attorney, who determines whether the warrant appears to be legally valid on its face and properly served, should the principal then turn the students over to the INS.

If the warrant is for search and/or seizure of information, it should at the very least:

- list the school by its correct name and address;
- state with particularity the places to be searched;
- state with particularity the items to be seized;
- be signed by a judge or magistrate;
- be less than ten days old;
- be served by an INS officer with proper identification.

To protect other immigrant students in the school and their Plyler rights, upon being convinced of the validity of the warrant, the principal should bring the INS officials to his/her office. The principal should then immediately inform the school superintendent of the request and contact an attorney for legal advice. Only upon the advice of an attorney, who determines whether the warrant appears to be legally valid on its face and properly served, should the principal allow the INS officials to search for the items listed.

If at all possible, to prevent the INS officers from walking through the school, for the safety of all immigrant students, the principal should request that the items being sought be brought to them. However, should the INS officers have to walk through the school, the principal and a witness should accompany them at all times. The principal and the witness should also carefully document all proceedings, such as the questions asked by the INS officers, the areas that are searched, the items that are seized, and the time involved.

If the warrant is a warrant to seize students and does not state that INS can also search the school, then INS has no right to walk around the school "inspecting" it or searching through records.

These practices should be incorporated into formal school policy and frequently communicated to all school personnel.

Analysis

The intrusion on undocumented immigrant students Fourth Amendment interests would be considerable in any of these situations. As students, undocumented immigrant students are covered by the Fourth Amendment when attending school. As students, undocumented immigrant students share all the same expectations of privacy experienced by all other students in a school. As immigrant students, because the Court has ruled that they have a semi-fundamental right of access to public education which can be denied or 'chilled' by any cooperation between a school and the INS--with the exception of the administration of F-1 and J-1 visas (see Supplement I)--undocumented immigrant students have a considerably higher expectation of privacy than do other students.

Finally, as undocumented students, given that neither they nor their parents would allow them to go to school if they felt that there was any real possibility of them being detected and/or apprehended by INS, both they and their parents have, in total, a much higher expectation of privacy than do other students attending the same schools.

The legitimate governmental interests would be minimal in any of these situations. Undocumented immigrant students, as undocumented students, do not pose any threats or problems to the schools' need to maintain security. If anything, immigrant students have much to contribute to their fellow classmates in the form of multicultural awareness and the need to aspire and do well in their school work.

Undocumented immigrant students, as undocumented students, have a semi-fundamental right to be in schools and thus are not congregating illegally, breaking any federal or state criminal laws, nor violating any legitimate school rules. Undocumented immigrant students, as immigrant students, do not pose any legitimate threat to the government or to Americans as a whole. Finally, given that students reside in the community, attend school over a period of time, and are normally dependent on their parents, INS will for the most part be able to locate them during after-schools hours and in other locations. Undocumented students can be contacted in other settings which will not entail a violation of their Plyler rights.

As a result, a balancing of the intrusion upon the Fourth Amendment interests of undocumented immigrant students against the legitimate governmental interests involved in any searches and seizures of undocumented immigrant students in school settings clearly weighs on the side of immigrant students entitling them to the highest protection against unreasonable search and seizures provided by the Constitution.

> INS is the only federal agency with legal authority to search for and seize foreign born persons who have violated or are suspected of having violated U.S. immigration laws. No other federal, state, or local authorities have been empowered to search for and seize foreign born persons solely on the basis of their immigration status. Other policing agencies may only search and seize foreign born persons on suspected violation of U.S. immigration law grounds if they have first searched or seized them on suspicion of or for having committed other crimes.
>
> As such, any search or seizure of immigrant students in public schools, for violations or alleged violations of U.S. immigration law, conducted by police forces other than INS may very well be illegal from the very beginning solely because it is conducted by persons without authority to do so.

The Legal Rights of The Undocumented Immigrant
by
Center for Immigrant Rights, Inc.

It is recommended that information be posted so that undocumented students be informed of their rights should they be arrested. These rights include:

- the right to speak with an attorney before answering any questions by police, federal agents, or immigration agents;
- the right to refuse to answer any questions regarding nationality or place of residence; the undocumented immigrant can give his or her name for facilitating identification by a family member or a friend;
- the right to refuse to sign any documents without first speaking with an attorney;
- the right to retract any document signed by the immigrant without an attorney;
- the right to contact a lawyer or agency who will represent him or her free of charge if he or she cannot afford to pay a private attorney; the INS must give the detainee a list of free legal services;
- the right to receive, in writing, the charges against him or her within 24 hours after arrest; the written form should also include the amount of bail, which should not be excessive;
- if detained, the immigrant has a right to call a lawyer, family members, or friends.
- if the detainee is in a detention center, he or she has the right to humane conditions, food, water, medical attention, bathrooms, showers, and other personal care;
- the right to appeal a deportation order to a higher court;
- the immigrant has the right to apply for political asylum; in order to qualify for political asylum there must be a fear of persecution if returned to the native country; this persecution must be for the reasons of race, religion, or membership in a social or political group;

D. DAY TO DAY PRACTICES

1. Overview

The fear of discovery and deportation has a very profound impact on the daily lives of undocumented students. Their psychology is described in a paper prepared by the Intercultural Development Research Association of San Antonio, Texas:

> "An illegal immigrant child will be afraid of authority, of being 'discovered,' and shoulders an enormous responsibility not to jeopardize the residency status of his family and parents. This fear is expressed in a reluctance to interact with school officials, to receive recognition, or to get into trouble' and call unwarranted attention to himself which may lead to discovery of his illegal residency status. Such fear can poison teacher-student relationships. Teachers may feel the immigrant child is not 'trying' or comes from a family that is not interested."

> "Teachers of immigrant children have also expressed the regret that this fear prevents the child from getting close to peers and teachers, even when both want to establish closer relationships."

The impact of this fear is also described in *Crossing the Schoolhouse Border: Immigrant Students and the California Public Schools*, a report issued by California Tomorrow:

> "For children, being here illegally brings increased instability, fear and insecurity to their lives. It also means living without protections, social services and assistance available to most people in this country. We found high correlations between undocumented status and dropping out or never enrolling in school, with interference with schoolwork, as well as with physical and mental health problems. Also, undocumented children are more likely than other immigrants to move frequently, hampering their attachment and achievement in school."

On top of this very real fear, undocumented students also face the barriers all immigrant students face as they settle into their communities and attend U.S. school on a day to day basis, as described in *New Voices*, a report by the National Coalition of Advocates for Students:

> "Immigrant students need years to learn a new language and make difficult adjustments; but most U.S. schools are not structured to provide this time. Immigrant students are more likely to be retained in-grade, inappropriately placed in special education, and are at double risk for being placed in low academic tracks on the basis of language limitations or slow academic progress. The cumulative effects of these experiences often causes immigrant students to leave school early, and creates great emotional stress."

> "Many of these children bring to the schools serious physical and mental health problems. Among the latter are grief, depression, loneliness, despair, and alienation. Because entire families have shared the same traumas of war, violence, severe poverty, perilous journeys, and difficult adjustments in this country, whole families may present the same symptoms."
>
> "While the majority of immigrant parents greatly value schooling, many do not know how to cross the wide chasms of language, culture and class differences which separate them from the schools."

It is imperative that schools adopt practices that not only refrain from denying immigrant students access to schools but also actively engender confidence and trust on the part of the undocumented and documented immigrant students and their parents. School principals and other school personnel should be:

- committed to the enforcement of the Plyler right of access on a day to day level;
- committed to establishing an atmosphere that is open and welcoming to all immigrant students free of fear from the INS and free of victimization, harassment, and intergroup conflict;
- willing to provide comprehensive culturally and linguistically appropriate counseling and guidance services;
- committed to insuring that immigrant students have equal access to educational opportunity by providing appropriate educational assessment and placement;
- committed to ensuring that immigrant students have a fair opportunity at school success by restructuring those policies, structures, and practices which impede access to effective instruction or sort them into programs which prepare them for inferior futures;
- committed to empowering immigrant students and communities by respecting native languages and cultures and supporting their retention when that is the community's preference;
- committed to developing qualified bilingual teachers, and retraining the present teaching force to have the skills and sensitivities necessary to successfully teach foreign born students;
- committed to developing a strong working relationship with immigrant parents.

2. Staff Training

In order to insure that school personnel become sufficiently aware of the background and special needs of immigrant students, schools should provide

systematic and on-going staff training which addresses the following issues:

- the history of immigration into the U.S. and the surrounding communities;
- the background of the present immigrant communities in the school district, including their reasons for immigrating to the U.S. and their cultural background;
- the implications of being undocumented and an immigrant in the United States, particularly for groups who are fleeing persecution;
- the right of access to public schools under Plyler v Doe;
- the right to a quality and equitable education that each LEP student is entitled under federal and state law, regardless of his country of origin or legal status;
- the role each staff person plays in creating a safe, friendly, and productive environment for each immigrant student;
- the importance of being an advocate for immigrant students;
- school policy as it specifically pertains to issues affecting immigrant students such as: how to handle requests for information by INS; how to handle warrantless requests to search and seize students by INS; how to handle requests to search and seizure covered by warrants by INS; and how to handle referrals on immigration issues;
- the importance of reaching out to immigrant parents.

The schools should provide special and more comprehensive training to guidance counselors and front line staff on the educational and legal rights of immigrants and the benefits and services available for them under the law.

3. The Need for Regulations

To systematically effectuate the goals outlined above, schools should officially promulgate regulations that make adherence to Plyler official school policy and mandate systematic school personnel staff training.

4. The Need to Quash Rumors

Any procedures or situations which, in the eyes of the undocumented student and their parents, threaten to expose them to the INS will have the effect of "chilling" the undocumented student's right of access to an education and should therefore be prohibited. Because undocumented students and parents live in constant fear of being discovered and often don't have access to proper authorities to verify rumors

about threatening procedures or situations, it is imperative that schools act affirmatively to quash unfounded rumors.

These measures should be taken in a timely and culturally sensitive manner. Root sources of unfounded rumors should be quickly ascertained. This information and assurances by the principal that the school is aware of Plyler rights and has taken appropriate measures to protect their rights should be quickly conveyed to students and parents by a trusted community liaison in appropriate languages. Failure to act in this affirmative fashion may well lead to the 'chilling' of Plyler rights.

E. RECOMMENDED ACTIONS FOR STATE AND LOCAL EDUCATION AGENCIES

In a recent study, *New Voices: Immigrant Students in U.S. Public Schools*, the National Coalition of Advocates for Students (NCAS) found that fear of detection and deportation is a major barrier to schooling for undocumented students. The report also documents the denial of access to a public education for young immigrants arrested by the INS and detained while awaiting adjudication of their cases.

The NCAS report recommends that state and local education agencies:

- insure that all agency and school personnel receive staff training in the areas described in Section D above;
- adopt policies which prohibit the U.S. Immigration and Naturalization Service, or any other agency, from entering schools or collaborating with school in ways which infringe upon the legal rights of immigrant children or cause children and families to mistrust the school and school personnel;
- prepare and distribute native language materials for immigrant families explaining their rights and school procedures for enrollment, including the fact that it is illegal for school personnel to request information about legal status;
- establish an atmosphere within schools that is open and welcoming to immigrant students and their families by providing them with environments free of victimization, harassment, and intergroup conflict;
- develop curriculum, school practices, and a multicultural staff which will promote the success of immigrant students;
- actively encourage the involvement of immigrant parents, community based self-help organizations, and advocates in school policy development;

II. The Right of Access

A. WHAT IS THE PLYLER V. DOE RIGHT OF ACCESS?

The Plyler right of access provides all undocumented students residing in any part of this country with the same right of access to a public education for Kindergarten through grade 12 that is provided under state and federal law to all U.S. citizen and permanent resident students. More specifically, under the Fourteenth Amendment's Equal Protection Clause, states and public schools are barred from denying undocumented immigrant students their right of access to public schools on the basis of their legal status. In essence, the Supreme Court has held their right of access to be a semi-fundamental right which can only be violated if the state can show that the disparate treatment promotes a substantial state interest.

Analysis

In 1982, the Supreme Court ruled in Plyler v. Doe, 457 U.S. 202 (1982), that states and public schools are prohibited under the Equal Protection Clause of the Fourteenth Amendment from taking actions which treat undocumented students disparately solely on the basis of their immigration status if the treatment does not promote a substantial state interest.

More precisely, the Court held: (1) undocumented immigrants (aliens) are covered by the Equal Protection Clause of the Fourteenth Amendment; and, (2) state statutes which withhold from local school districts any state funds for the education of children who are not "legally admitted" into the U.S., and which authorize local schools districts to deny free enrollment in their schools to children who are not "legally admitted" to the U.S. are in violation of the Equal Protection Clause of the Fourteenth Amendment.

The Court, in upholding their right of access, applied an intermediate level of review. It elevated undocumented students to a semi-suspect class and found the right to schooling in this context to be a semi-fundamental right, making the right of access for undocumented students a semi-fundamental right.

Any practice or requirement by public schools, their staffs or other parties which may possibly expose the undocumented status of the student or create a reasonable fear of being exposed to INS, has the effect of "chilling" their right of access to

schools and as such is quite likely in violation of Plyler. The school's duty must include: the duty to refrain from such discriminatory activities; the duty to affirmatively "quash" rumors or misinformation; and the affirmative duty to actively inform school personnel, communities, and parents of these rights and the ensuing protection these create for undocumented communities.

> "If the State is to deny a discrete group of innocent [undocumented] children the free public education that it offers to other children residing within its borders, that denial must be justified by a showing that it furthers some substantial state interest." (Plyler, 457 U.S. at 230).
>
> [T]he Court [in Plyler],...ruled that undocumented immigrant students and all other immigrant students had a quasi-fundamental right to access public schools. The Court recognized that '[d]enying education to undocumented children imposes a lifetime hardship on a discrete class of children.'" (Plyler at 223). Further, it noted that '[i]n these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education." [Brown v. Board of Education, 347 U.S. 483, 493 (1954)] Withholding education has been likened to 'penalizing these children for their presence within the United States,' a circumstance over which they generally have no control. (Plyler, 457 U.S. at 220)" (Holguin, 1987 at 22).

B. WHICH STUDENTS ARE COVERED BY THE PLYLER RIGHT OF ACCESS?

All immigrant students residing in the United States are covered directly or indirectly by the Plyler right of access. Any active attempts to distinguish between documented and undocumented students by itself may well constitute a violation of some student's Plyler rights, resulting in an unconstitutional practice.

(1) Undocumented Students

All foreign born students residing in the United States without legal immigration status who would otherwise be eligible to attend their local public schools are explicitly covered by Plyler and thus guaranteed a Plyler right of access. This group includes all age appropriate students residing in the U.S. who:

- entered the U.S. without being inspected by INS and who remain here without valid immigration papers; or
- were inspected at the border, entered with a valid visa, and who have since fallen out of status.

(2) Documented Students[5]

All foreign born students residing in the United States with legal immigration status, who would otherwise be eligible to attend their local public schools, appear to be similarly covered by the Plyler right of access. They are also covered by the Fourteenth Amendment, and, all too often, similarly situated. Additionally, as they have been deemed "persons" covered by the Fourteenth Amendment, they are entitled to the same level of access and protection received by other citizen or permanent resident students in U.S. public schools. (See Supplement I.)

Schools do not have an obligation to issue I-20's for foreign born students. As such, immigrant student's do not have a right to have I-20's issued on their behalf by public schools in the U.S. Should a school district, however, decide to grant residency to any student here on an F-1 or J-1 visa, it should act consistently with all other similarly situated students. (See Supplement I.)

(3) Documented and Undocumented Students

For the Plyler right of access to be fully and properly enforced as to undocumented immigrant students, it must be enforced and adhered to for all immigrants.

> Educators should remember that only the Immigration and Naturalization Service has been given the responsibility of enforcing U.S. immigration laws--not the public schools or its personnel.

Analysis

Given that it is generally impossible to distinguish between (1) documented and undocumented immigrant students and (2) immigrant and native born students without probing into their immigration status or nationality, it is evident that for schools to refrain from violating or 'chilling' the Plyler rights of undocumented immigrant students, they have to view and treat all immigrant students in the same manner.

C. DO IMMIGRANT STUDENTS HAVE A DUTY TO ATTEND SCHOOL?

Immigrant students, as all other students, are obligated under state laws to attend school until they reach a state mandated age. Again, the right to attend school continues even when the state obligation ends.

State mandatory attendance laws generally make acts perpetrated by persons other than the students which prevent students from attending school illegal and punishable by civil or even criminal penalties. Although, these statutes are generally aimed at parents and other family members who keep their children out of school, they may also be applicable to school personnel who, through their own volition, keep immigrant students from attending school.

D. ARE UNDOCUMENTED STUDENTS BOUND BY CONSTITUTIONAL RESIDENCY REQUIREMENTS?

(1) Immigrant students entitled to a right of access to public schools are bound by the same residency requirements--assuming they are constitutional--imposed on all citizen and permanent resident students in the state in which they reside. State residency requirements are constitutional if they are properly defined, uniformly applied, and developed to further a substantial state interest. As such, residency laws should not be applied in a manner which discriminates against immigrant students.

Analysis

"Immigrant Students, as all other students, are bound by constitutional residency requirements of the state in which they reside. Of course, a school district may require that illegal alien children, like any other children, actually reside in the school district before admitting them to the schools. A requirement of de facto residency, uniformly applied, would not violate any principle of equal protection. (Powell, J., concurring) Plyler 457 U.S. at 227, note 22 (1982)." [Martinez v. Bynum, 461 U.S 321, 328 (1983)].

Under constitutional state residency requirements, all school-age students, including immigrant students, must be deemed as residents if they or their parent or legal guardian live in the district with a bona fide intention of remaining there. The 'intention to remain' does not imply an intention never to leave. Given the mobility of people and families in this country, changing a place of residence is commonplace.

The Supreme Court, in Martinez v. Bynum, 461 U.S. 321 (1983), defined constitutional residency requirements as follows:

> "A bone fide residence requirement, appropriately defined and uniformly applied, furthers the substantial state interest in assuring that services provided for its residents are enjoyed only by residents.

> Such a requirement with respect to attendance in public free schools does not violate the Equal Protection Clause of the Fourteenth Amendment. It does not burden or penalize the constitutional right of interstate travel, for any person is free to move to a State and to establish residence there. A bona fide residence requirement simply requires that the person does establish residence before demanding the services that are restricted to residents." [Martinez v. Bynum 461 U.S. at 328-329 (1983)].

The Court in Plyler v. Doe, 457 U.S. 202 (1982), further noted that such policies must be uniformly applied in order to be bona fide. States are prohibited from accomplishing what would otherwise be prohibited under the Equal Protection clause or the Supremacy Clause by defining a disfavored group as nonresident.

(2) Under Plyler, the distinction between undocumented persons, on the one hand, and documented persons and United States citizens, on the other, do not constitute a bona fide residency requirement.

Analysis

A state may not, however, accomplish what would otherwise be prohibited by the Equal Protection Clause, merely by defining a disfavored group as nonresident. [Plyler v. Doe 457 U.S. 202, 227 n. 22 (1982)].

(3) Immigrant students residing in the U.S. on nonimmigrant visas cannot be denied "resident status" by public schools solely on the basis of their nonimmigrant status. Such residency requirements have been held to be inherently suspect requiring a compelling state interest. They have also been ruled non-bona fide residency requirements.

Analysis

Although the Supreme Court has never ruled on this issue, a lower court in Pena v. Board of Educ. of City of Atlanta, 620 F. Supp. 293 (N.D.Ga. 1985) ruled that the Fourteenth Amendment Equal Protection Clause was violated when the plaintiff, a local school district, required that tuition be paid for public school admission of the children of certain nonimmigrant parents, including F-1 students, but not for all nonimmigrant parents, such as diplomats or journalists, or for U.S. citizens whose residency in the school district is also for a temporary purpose such as attending a university. The school district did not prove a compelling state interest nor was the residency requirement a bona fide residency requirement.

E. CAN IMMIGRANT STUDENTS ON NONIMMIGRANT VISAS BE PRECLUDED FROM ESTABLISHING RESIDENCY IN A SCHOOL DISTRICT RESULTING IN THE DENIAL OF THEIR RIGHT OF ACCESS?

(1) Schools are prohibited from imposing additional burdens which have not been contemplated by Congress on immigrants. Under the Constitution, they must also treat all immigrants similarly situated similarly.

Analysis

The Supreme Court has long held that state and local governments are prohibited under the Equal Protection Clause of the Fourteenth Amendment from enacting classifications based on race, Brown v. Board of Education, 347 U.S. 483 (1954), national origin, Korematsu v. United States, 323 U.S. 214 (1944), or alienage, Graham v. Richardson, 403 U.S. 365 (1971), which discriminate, deny benefits, or exclude from participation. Such classifications are deemed inherently suspect and require a compelling state interest precisely tailored to serve compelling governmental interest to be found constitutional. This standard has been described as 'strict' in theory and 'fatal' in fact. (Gunther, 1972).

It has long been determined that the federal government has almost exclusive plenary power over immigration. Under the Supremacy Clause, states are generally preempted from adopting practices and regulations which discriminate against immigrants (aliens). States and public schools are, for the most part, prohibited from implementing policies and practices which discriminate against documented foreign students.

They may, it appears, in very limited situations, implement regulations that discriminate against documented students (aliens lawfully admitted) if the regulations do not impose additional burdens not contemplated by Congress. Toll v. Moreno, 458 U.S. 1 (1982). In Toll v. Moreno, where the Supreme Court invalidated a state university's denial of in-state tuition benefits for non-immigrant students, the Court held that any state regulations not congressionally sanctioned that discriminate against aliens lawfully admitted were preempted if they imposed additional burdens not contemplated by Congress. Id. at 2983. The Court in Plyler also held that states have little if any power to classify immigrants (aliens):

> "The States enjoy no power with respect to the classification of aliens. See Hines v. Davidowitz 312 U.S. 52 (1941). This power is 'committed to the political branches of the Federal Government.' Mathews v. Diaz, 426 U.S. 67, 81 (1976). Although it is 'a routine and normally legitimate part' of the business of the Federal Government to classify on the basis of alien status, id., at 85, and to 'take into account the character of the relationship between the alien and this country,' Id. at 80, only rarely are such matters relevant to

legislation by a State. See Id. at 84-85; Nyquist v. Mauclet 432 U.S. 1, 7, n. 8 (1977)." (Plyler, 457 U.S.at 225).

(2) All foreign born students residing here as dependents of parents or guardians who are here on nonimmigrant visas have the same right of access to a free primary and secondary public education as that enjoyed by citizen and undocumented students. This includes all students residing here in the U.S. on B-2, F-2, J-2., and K-2 visas.

School personnel should refrain from making inquiries from a student or his parents concerning their immigration status, including if they are here legally on any of the above visas, because it may expose the undocumented status of students or parents (see III.B).

(3) Foreign born students here on F-1 and J-1 Visas can be precluded from establishing residency in a school district. Should a school district, decide, however, to grant residency to any student here on an F-1 or J-1 visa, it must act consistently with all other similarly situated students (see Supplement I). And, finally, it is mandated on the state level by the state truancy and mandatory attendance laws.

III. Parents and Advocates

> "Active parental involvement in schools - through roles such as teacher's aides, creators or coordinators of extracurricular activities, and participants in policy decisions - helps insure a culturally sensitive academic and social school program. Their participation reduces children's experience of the distance between home and school and sends a message to children that the school staff and program are important. When educators engage minority parents as partners in their children's education, they develop a sense of efficacy which is communicated to their children with positive academic results. (Comer, 1984; Cummins, 1986)" (*New Voices* at 73).

> "The Project found, all too often, that ...(community) organizations--aside from individual efforts by parents, friends and school personnel--are the only groups actively involved in the day-to-day struggle of dealing with the needs of immigrant students. ... Community organizations can be powerful allies for assisting schools to meet the multi-faced needs of immigrant students and families. Working directly with families, staff of community agencies are often able to develop trusting and productive relationships with immigrant parents, who themselves are often very active within these organizations." (*New Voices* at 80).

A key element in the safeguarding of Plyler and other educational rights is the development of a constituency who will actively monitor school practices and advocate on behalf of immigrant students. Immigrant parents, community-based immigrant self-help organizations, refugee resettlement organizations, child advocates, and immigrant rights advocates all need to work together in forming such a constituency. These efforts will not only benefit immigrant students, but other vulnerable students as well. Further, the act of organizing, learning about schools, and advocating on behalf of these students will contribute to the empowerment of all communities involved.

It is therefore recommended that:

- immigrant parents and community based self-help organizations familiarize themselves with school issues and with effective advocacy strategies;

- state and local education advocacy and immigrant rights advocacy organizations familiarize themselves with the unique problems that immigrant students face in schools;

- all organizations document school practices as they affect immigrant students, particularly instances when their rights are violated; the documented violations should be reported to other advocates, state department of education civil rights offices, local community based organizations, and immigrant rights advocates.

It is further recommended that the following projects and activities be developed as part of the above described advocacy work:

- institute, or cause schools to institute, a two pronged 'Know Your Rights Campaign' geared to affirmatively inform both immigrant communities and school personnel of Plyler rights, of prohibited and 'chilling' school practices, and of state mandatory attendance laws;

- document local school assessment practices;

- inquire into the types of information kept on each student and monitor the manner in which local schools safeguard such information to ensure compliance with FERPA and the applicable state privacy acts;

- document instances where schools have infringed upon or 'chilled' immigrant student's Plyler access rights;

- document instances where immigrant students have been harassed or discriminated against by other students or school personnel;

- communicate documented violations to appropriate authorities and advocate networks;

- develop local networks and plug into state and national networks of advocates working on these and other school issues;

- advocate locally for schools to be made "safe and secure" learning environments for immigrant students by making it clear to local policymakers and educators that harassment and victimization of students by adults or other children is not acceptable.

Now that the legalization period under the 1986 Immigration Reform and Control Act (IRCA) has come to an end and INS is increasing its enforcement activities, NCAS urges particular vigilance on behalf of immigrant students and their Plyler rights.

Supplement 1
Foreign Student Status

For the purposes of this supplement, all foreign born students present in the U.S. on nonimmigrant visas*, are referred to as nonimmigrant students. The term "nonimmigrant" is used here as it is in the Immigration and Nationality Act**.

(I) Under the Immigration and Nationality Act, foreign born elemenatry or secondary students may only request and receive I-20A-B's from schools which have received prior approval from INS for attendance of nonimmigrant students (on F-1 and M-1 visas) [See 8 CFR Section 214.3 and 8 CFR 214.2(f)]

(II) It is strongly urged that a public school or a public school system refrain from seeking approval for attendance of nonimmigrant students (foreign born students here on F-1 and M-1 visas) [authority to issue form I-20A-B's][6] unless the school or school system can guarantee that the procedures, safeguards, and administrative mechanism put in place to issue I-20A-B's and to comply with the administrative and recordkeeping duties mandated by the regulations and by signed agreement with INS, will in no way violate or 'chill' each and every immigrant students' Plyler right of access.

(III) Elementary and secondary schools which have been granted approval from INS for the attendance of nonimmigrant students (on F-1 and M-1 visas) are responsible

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* Including B-1 (Temporary visitor for business), B-2 (Temporary vistor for pleasure), F-1 (Student attending academic institution), F-2 (Spouse or child of F-1 student), K-1 (Fiancee or fiance of U.S. citizen), J-1 (Exchange visitor [in the U.S. for teaching, research, or study under specially designated programs like the Fulbright Scholar program]), J-2 (Spouse or child of exchange visitor), K-2 (Child of fiancee or fiance of U.S. citizen), M-1 (Student in vocational or other recognized non-academic institution) and M-2 (Spouse or child of M-1 student) visas.

** 8 U.S.C. 1101 et seq.

to INS solely for the specific nomimmigrant students: (1) for whom the school has issued I-20A-B's; and (2) who have been granted permission by INS to study at that specific school. As such, an approved school is under no obligation to INS to keep records on any of the other students. Taken together, Plyler, FERPA, and state privacy laws prohibit the monitoring, reporting, and policing of any of the other students for INS (see Sections II and III). A formal relationship with INS created for the purposes of receiving authorization for the attendance of nonimmigrant students does not make the school an extension of the INS, nor deputize school personnel as INS enforcement agents [(see 8 CFR Section 214.3(g)].

(IV) Elementary and secondary schools granted approval by INS for attendance of nonimmigrant students are under no obligation by INS, and are prohibited by FERPA, from providing INS with confidential* (other than directory types of information as defined by FERPA) information on each of their approved F-1 and M-1 students in the course of reporting requirements (see National Association for Foreign Student Affairs, *Advisor's Manual of Federal Regulations Affecting Foreign Students and Scholars*).

(V) Minor children and spouses accompanying nonimmigrant students in the U.S. on F-1 and M-1 visas are here on F-2 or M-2 visas. As immediate family accompanying a F-1 or M-1 holder, they do not qualify for an F-1 or M-1 visa. Given that:

(a) nonimmigrant students on F-2 and M-2 visas can legally attend schools in the U.S. without receiving permission from INS to attend any specific primary or secondary school (see 8 CFR Section 214.2(f)(1),(3) and (5) (1988));

(b) elementary and secondary schools (1) can only be authorized by INS to issue I-20A-B's for students seeking F-1 and M-1 visas and (2) are only responsible to INS for students who have been granted F-1 and M-1 visas to study in their specific school or schools (based, in part, on the I-20A-B's that they specifically issued to these specific students)(see 8 CFR 214.3 (1988));

(c) schools are prohibited under Plyler from inquiring into the immigration status of immigrant students or adopting practices which may 'chill' their right of access;

schools should refrain from denying access to F-2 and M-2 visa holders who otherwise would qualify as residents[7] of the school district and should refrain from inquiring about an immigrant student's F-1 or M-1 visa unless the school issued them the I-20A-B form upon which the INS granted them a visa to study at a specific school.

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* See Section I.B.7 for further discussion of FERPA.

(VI) Once a public school or school sytem has been approved for attendance by nonimmigrant students on F-1 and M-1 visas and the school or school system begins issuing I-20A-B's, under the Fourteenth Amendment, it should treat all qualified nonimmigrant students in an equal and nondiscrimatory manner:

> "Any alienage classification which imposes a greater burden upon aliens than Congress intended is invalid, and cannot be asserted as a compelling state interest, or even as a rationale for the classification. Mathews v. Diaz, 426 U.S. at 84, 96 S.Ct. at 1893; Toll v. Moreno, 485 U.S. 1, 102 S.Ct. 2977, 73 L.Ed. 2d 563 (1982). As the Court noted in Mathews, the constitutional scheme of this country commits relations between the United States and aliens within its borders to the political branch of the federal government. 426 U.S. at 81, 96 S.Ct. at 1892. Therefore, it is beyond the authority of the states to attempt to regulate the conditions of entry and residence of aliens. Id. at 84, 96 S.Ct. at 1893." [Pena v. Board of Education of City of Atlanta, 620 F. Supp. 293, 299 (N.D. Ga. 1985). (Federal District Court case involving children of F-1, and other nonimmigrant visa holders)]

Supplement 2:

Overview of Relevant Search and Seizure Law

(I) In a Public School Context:

(A) Submitting to Questioning by Police in a Public School

Immigrant students are covered by the Fifth Amendment and as such have a constitutional right to remain silent when being questioned by policemen. Immigrant parents have given custody of their children to the school authorities during the time in which they are in attendance solely for the purposes of providing them with a quality education. As such, schools should never assume that they have the authority to make students available for such purposes which may, in all likelihood, have the effect of denying students their constitutional rights, both under the Fifth (Right to Remain Silent) and the Fourteenth (Equal Protection - Plyler v Doe) Amendments.

> "Neither school officials nor anybody else can make students talk to the police. You have a constitutional right to remain silent. The practice in some schools is for school officials to cooperate with police investigations by taking students from class and making them available for questioning. In New York, the State Education Department has warned school boards 'that children are given over to the custody of the school authorities for one purpose only and that is education in all its phases.' Therefore, 'police authorities have no power to interview children in the school building or to use the school facilities in connection with police-department work, and the board has no right to make children available for such purposes.' Police who wish to speak to a student must take the matter up directly with the student's parents." (ACLU, *Students' Rights Handbook*, pp. 75, 76).

(B) Searches in Public Schools

"The Supreme Court has ruled that Fourth Amendment protections against unreasonable searches and seizures apply to school searches of "a child's person or a closed purse or other bag carried on [the] person..."

> "I fully agree with Part II of the Court's opinion. Teachers, like all other government officials, must conform their conduct to the Fourth Amendment's protections of personal privacy and personal security." [New Jersey v. T.L.O. 469 U.S. 325, 353-354 (1985). (Justice Brennan, with whom Justice Marshall joins, concurring in part and dissenting in part.)]

The Court has also ruled that the "legality of a school search turns upon "[its] reasonableness, under all the circumstances," requiring an "accommodation of the privacy interests of school-children with the substantial need...to maintain order in the schools..."[8] And that "generally,...a search does not require a warrant and will be lawful if (a) there is "at its inception" "reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school" and (b) it is "permissible in its scope."[9] Additionally, a search will be permissible in its scope when measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the student's age and sex and the nature of the infraction. A state court has since also found a student's locker is subject to constitutional protection.[10]

> "[T]he legality of a search of a student should depend simply on the reasonableness, under all the circumstances, of the search. Determining the reasonableness of a search requires a two fold inquiry: first, one must consider 'whether the ...action was justified at its inception,' (Terry v. Ohio 392 U.S. 1, 20 (1968); second, one must determine whether the search as actually conducted 'was reasonably related in scope to the circumstances which justified the interference in the first place, 'Ibid. Under ordinary circumstances, a search of a student by a teacher or other school official will be 'justified at its inception' when there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school. Such a search will be permissible in its scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction." (New Jersey v. T.L.O., *supra*, at 339-340.)

(II) In an Immigration Law Enforcement Context:

(A) Responsibility For Enforcement of Immigration Laws

The power to regulate immigration into the United States is exclusively a federal power. The Department of Justice has historically placed that responsibility with the Immigration and Naturalization Service. As such, state and local police forces should refrain from taking on the responsibility of enforcing immigration laws, unless a suspect has been arrested for a non-immigration criminal violation.[11]

(B) Searches and Seizures in General

INS searches and seizures are covered by the Fourth Amendment to the Constitution.

> "We agree that, in light of Almeida-Sanchez v. United States, 413 U.S. 266, 93 S.Ct. 2535, 37 L.Ed.2d 596 (1973), the applicability of the Warrant Clause of the fourth amendment to INS enforcement activities can no longer be doubted." [Blackie's House of Beef, Inc. v. Castillo, 659 F.2d 1211, 1217 (1981)].
>
> "However, the INS has 'no discretion with which to violate constitutional rights. LaDuke, 762 F.2d at 1325." (International Molders, 799 F.2d at 552).

The Fourth Amendment prohibits "unreasonable searches and seizures" and sets forth the necessary requirements for a valid warrant:

> "The Fourth Amendment prohibits 'unreasonable searches and seizures,' requiring that 'no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.'(U.S. Const. Amend. IV) The warrant procedure contemplates that the necessity for every intrusion upon the privacy of an individual first be considered by a 'neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime.' [Johnson v. United States, 333 U.S. 10, 14, 68 S.Ct. 367, 369, 92 L.Ed. 436 (1948)] This prior consideration must be more than pro forma: '[T]he magistrate must judge the reasonableness of every warrant in light of the circumstances of the particular case, carefully considering the description of the evidence sought, the situation of the premises, and the position and interests of the owner or occupant.' Zucher v. Stanford Daily, 436 U.S. at 570, 98 S.Ct. at 1983 (Powell, J., concurring)" (Blackie's, 659 F.2d at 1217).

The Supreme Court has held that the probable cause standard to be applied in each type of case should be determined by balancing the intrusion of the individual's Fourth Amendment privacy interests against the legitimate state interest being pursued.

> "Since Marshall, the Court has reiterated its conviction that 'the permissibility of a particular law enforcement practice is judged by balancing its intrusion on the individual's Fourth Amendment interest against its promotion of legitimate governmental interests. Delaware v. Prouse, 440 U.S. 648, 654, 99 S.C. 1391, 1396, 59 L.Ed.2d 660 (1979)" (Blackie's, 659 F.2d at 1224).

Neither the Supreme Court, nor any other courts for that matter, have defined the probable cause standard to be applied during a search or seizure conducted by the INS in a public school context. However, it is quite clear that the probable cause standard would have to be considerably higher than that applied in a 'factory raid' context[12] given that: under Plyler v Doe, the Supreme Court has ruled that each undocumented student has a semi-fundamental right of access to public schools; any such raid would almost certainly have the affect of 'chilling' the Plyler right of access of all other undocumented students in that particular school, in the school district, and other undocumented students in the region (perhaps even in the nation); undocumented students and their parents have a very high expectation of privacy given that the Supreme Court has held that undocumented students have a Plyler semi-fundamental right of access; and finally that residing in this country without legal status, by itself, is not a violation of either federal or state criminal laws, but of federal immigration laws which are civil in nature.

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Graham v. Richardson, 403 U.S. 365, 91 S.Ct. 1848 (1971).

Hines v. Davidowitz, 312 U.S. 52, 61 S.Ct. 399 (1941).

International Molders & Allied Workers' Local U. v. Nelson, 799 F.2d 547 (9th Cir. 1986).

Johnson v. United States, 333 U.S. 10, 68 S.Ct. 367 (1948).

Korematsu v. United States, 323 U.S. 214, 65 S.Ct. 193 (1944).

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New Jersey v. T.L.O., 469 U.S. 325, 105 S.Ct. 733 (1985).

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Plyler v. Doe, 457 U.S. 202, 102 S.Ct. 2382 (1982).

San Antonio Independent School District v. Rodriguez, 411 U.S. 1, 93 S.Ct. 1278 (1973).

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Toll v. Moreno, 458 U.S. 1, 102 S.Ct. 2977 (1982).

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Endnotes

1. Undocumented students, for our purposes, are students (K-12) who reside in the United States without legal immigration status. That is students who entered the U.S. without being inspected by INS and remain here without valid immigration papers or students who entered with a valid visa and have since fallen out of status. Foreign born students who are here on foreign nonimmigrant student visas (F-1, J-1) or who are here with valid nonimmigrant visas and who intend to remain here temporarily on foreign student visas are not included.

2. (See Box on state mandatory attendance laws for possible liability.)

3. In *New Voices*, NCAS documented the lack of comprehensible data on the immigrant students for monitoring, planning, teaching and advocacy purposes. In the same report, NCAS recommended that schools immediately begin collecting such data.

   The collection of this data, however, needs to be very strictly restricted to data which is pedagogically useful and which does not infringe on the rights of the students or their parents. In the case of immigrant students, this involves limiting the collection of such data to that which does not risk the "chilling" of their Plyler rights.

   Requiring that a student, for example, state his country of origin, may justifiably create a fear of being exposed as an undocumented immigrant. If, however, the school: a) limits its collection of such "chilling" information solely to country of origin; b) develops proper precedures that insure that this information is used solely for pedagogical purposes, and that parents and students are carefully informed of the need for the information and guaranteed that it will be solely used for pedagogial purposes; c) strictly adheres to its obligations under FERPA and applicable state privacy legistation; and d) strictly monitors and enforces such procedures, the risk of collecting this information **may** be minimized and thus justifiable. [It is strongly recommended that any decision to collect this information only be made after consulting with immigrant parents and immigrant rights advocates.]

4. Unless application is for a member of a food stamp household or an AFDC assistance unit.

5. Documented students include those residing in here in the U.S.:

   a) "under color of law",
   b) as permanent residents,
   c) as naturalized citizens,
   d) as asylees,
   e) under voluntary departure,
   f) as parolees,
   g) on nonimmigrant visas.

6. Under Sections 1101(a)(15)(F)(i) and/or 1101(a)(15)(M)(i) of the Act.

7. (F)(i) an alien having a residence in a foreign country which he has no intention of abandoning, who is a bona fide student qualified to pursue a full course of study and who seeks to enter the United States temporarily and solely for the purpose of pursuing such a course of study at an established institution of learning or other recognized place of study in the United States, particularly designed by him and approved by the Attorney General after consultation with the Office of Education of the United States, which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant student, and if any such institution of learning or place of study fails to make reports promptly the approval shall be withdrawn, and (ii) the alien spouse and minor children of any such alien if accompanying him or following to join him.

   I.N.A. 1101(a)(15)(F)(i)

8. Center for Law and Education, *Training and Resource Materials on Primary Level Education Programs prepared for IMPROVING CLIENTS' LIVES THROUGH EDUCATION ADVOCACY.* p.340, January, 1989.

9. Center for Law and Education, *Training and Resource Materials on Primary Level Education Programs prepared for IMPROVING CLIENTS' LIVES THROUGH EDUCATION ADVOCACY.* p.338, January, 1989.

10. People in Interest of P.E.A., 754 P.2d 382 (Colo. 1988).

11. In a policy statement issued in 1978, the U.S. Justice Department made the following announcement:

    "Attorney General Griffin B. Bell today reaffirmed the Department of Justice policy that the responsibility for enforcement of the immigration laws rests

with the Immigration and Naturalization Service and not with state and local police.

> INS officers are uniquely prepared for this law enforcement responsibility because of their special training and because of the complexities and fine distinctions of immigration law, Mr. Bell said.
>
> The Attorney General stated that the Department would continue to urge state and local police forces to observe the following guidelines:
>
> 1. Do not stop and question, detain, arrest or place "an immigration hold" on any persons not suspected of crimes, solely on the grounds that they may be deportable aliens;
>
> 2. Upon arresting an individual for a non-immigration criminal violation notify the Service immediately if it is suspected that the person may be an undocumented alien so that the Service may respond appropriately;
>
> INS officials will continue to work with state and local law enforcement officials to carry out this policy.
>
> Justice Department - Announcement of Attorney General Bell Policy Statement (Sept, 1978)

(Excerpts of this announcement are included for policy analysis purposes.)

12. Two Circuit Courts, the District of Columbia Circuit Court and the 9th Circuit Court, have held that the probable cause standard in INS policing cases involving searches and seizures in businesses is lower than that in criminal cases and higher than in administrative search cases. It was defined as sufficient specificity and reliability to prevent the exercise of unbridled discretion by the law enforcement officials.

> The Court in Blackie's, while accepting a hybrid probable cause standard for INS entry warrants, emphasized the need for "sufficient safeguards to assure that nothing impermissible would be left to the discretion of the INS agents." 659 F.2d at 1226. International Molders & Allied Workers' Local U. v. Nelson 799 F.2d 547, 552 (9th Cir. 1986)
>
> This is one of "those situations in which the balance of interest precludes insistence upon 'some quantum of individualized suspicion,'" at least as to the persons sought. Delaware v. Prouse. Blackie's 659 F.2d at 1225.

The D.C. Circuit Court outlined the following restrictions which they ruled made the warrant in that case valid:

> The warrant was duly restricted to the location in which there was cause to believe aliens could be found: "the premises located at 22nd and M Streets, North West, Washington, D.C." (App. at 40) It was also restricted as to the time within which the warrant could be executed, providing that execution must occur within 10 days of the order and during the daylight hours.
>
> Furthermore, the INS was restricted as to how it could act once inside the premises. A search could only be conducted where aliens were likely to be hiding. Thus, the INS was proscribed from searching the files or books of Blackie's, and it is uncontroverted that they searched only those areas in which aliens were likely to be found. No private property of Blackie's within the premises was searched or seized.
>
> Nor did the warrant leave impermissible discretion in the hands of the INS agents with respect to the persons sought to be questioned. The Affidavits filed along with the application for search warrant suggested that numerous persons working in non-public areas of the restaurant were possibly illegal aliens, and gave credible reasons for the affiants' suspicions as well. ...Our view as to the propriety of this warrant is also influenced by the significant amount of supporting evidence that accompanied the application for warrant. These included one affidavit summarizing two separate day-long surveillances of Blackie's, and a lengthy affidavit from an anonymous informant who claimed to have worked at Blackie's. ...three independent sources of information... the rule is that the balancing of the public against private interests is a matter which can be inferred from the particular provisions of the warrent as a whole, and which goes into the calculus of "reasonableness" vel non. Blackie's 659 F.2d at 1226-1227.

The 9th Circuit, upon adopting the D.C. Circuit's analysis, further ruled that the warrant did not have to identify the suspects by name but only had to narrow down the field of potentially vulnerable persons to those employees whom the INS might reasonably believe to be aliens.

> The requirement to "identify the suspect(s) by name" or to provide "enough specific identifying information to assure that the search for that person is reasonably likely to result in finding that person" imposes an unreasonable and impractical burden on the INS. We agree with the District of Columbia Circuit that "warrants and accompanying affidavits [that] narrow down the fold of potentially vulnerable persons to those employees whom INS agents might reasonably believe to be aliens," 659 F.2d at 1226, satisfy the requirements of the Fourth Amendment even where the targeted persons are onto identified by name. International Molders' 799 F.2d at 553. 1986)

The 9th Circuit stated that to hold INS warrants to a higher probable cause standard would be to leave INS free to only combat isolated instances of illegal immigration and powerless to combat the much more serious problem of illegal alien employee congregations at central places of business.

> The effect of the court's rule, then, is highly ironic; it leaves the INS free to combat isolated instances of illegal immigration and powerless to combat the much more serious problem of illegal alien employee congregations at on central place, such as a restaurant. Blackie's 659 F2d at 1225.

13. "Child Nutrition Programs

Program Description. Four federal programs provide free reduced-price meals to eligible children at schools, child care centers, and summer programs. They are the School Lunch or School Breakfast programs, Child Care Food program, and the Summer Food Service program. . . .

Application Procedures. Parents should receive an application for the school breakfast or school lunch program . . . Though the application form asks for the Social Security number of all adult household members, if they do not have one they can simply write "none" in response to the question."

> Charles Wheeler, "Alien Eligibility For Public Benefits: Part I", *Immigration Briefings*, Federal Publications, No. 88-11 November 1988, page 18.

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DR. RICHARD R. GREEN
CHANCELLOR

CHANCELLOR'S REGULATIONS, STUDENTS VOLUME - UPDATE NO. 4, 1988-1989

January 9, 1989

TO: COMMUNITY SCHOOL BOARD PRESIDENTS, ALL SUPERINTENDENTS, EXECUTIVE DIRECTORS, HEADS OF OFFICES AND PRINCIPALS OF ALL DAY SCHOOLS

FROM: Richard R. Green

SUBJECT: Immigrant Students, Documented and Undocumented - A-145

Enclosed is a revision of the Chancellor's Regulation, Students Volume, A-145. Please place this new regulation in your copy of the Students Volume.

The following table will aid you in substituting new pages:

SUBJECT	Regulation Number	New Page Numbers	Date Issued	Substitute For Old Pages	Issued
Immigrant Students, Documented and Undocumented	A-145	1 thru 4	1/9/89	1	10/1/79

RRG:cms
Attachment

CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK

Regulation of the Chancellor

Category: STUDENTS

No.: A-145

Subject: Immigrant Students, Documented and Undocumented

Page: 1 of 4

Issued: 1/9/89

ABSTRACT

This Regulation supersedes Chancellor's Regulation A-145 (Admission of Alien and Foreign-Born Students, dated October 1, 1979), and reinforces the policy that the monitoring of the immigration status of a child or parent is not a proper function of the New York City Board of Education. It also provides guidelines that will help schools develop a coordinated school plan to address the needs of our growing immigrant population.

All children are to be admitted to New York City Public schools, without regard to their immigration status or the immigration status of their parents, provided that they have met all requirements of Chancellor's Regulation A-110 and/or A-120.

Reference to a child's or parent's immigration status is not to appear on any school forms and/or records.

INTRODUCTION

On November 6, 1986, the President signed into law the Simpson-Rodino legislation entitled the Immigration Reform and Control Act (IRCA). This act allows certain undocumented aliens to acquire legal status (amnesty), provided specified requirements are met. The law also contains employer sanctions and employment-related anti-discrimination provisions which affect documented and undocumented immigrants as well as U.S. citizens. Although there was amnesty, great numbers of persons have not applied and/or do not qualify.

New York City has a tremendous and growing number of immigrants, documented and undocumented. They bring to our city their energy, vitality, ambition, and cultural and linguistic diversity. However, immigrant children often experience unique difficulties that can affect their ability to succeed: culture shock, language barrier, unfamiliarity with the New York City school system, grief over separation of family, stress related to immigration status, etc.

In addition to these difficulties, there are ramifications of the Immigration Reform and Control Act on family life that will impact on our schools. Among them are:

1. confusion about medical care and services available for undocumented children and their families resulting in their not availing themselves of services or in institutions wrongfully denying services.

2. difficulties of adolescents in obtaining required documentation, in seeking employment, or participating in work study and other educational programs, e.g., School to Employment Program, Cooperative Education, Summer Youth Employment Program.

3. employment-related discrimination resulting in students and their families having difficulties obtaining and maintaining employment.

4. employment-related abuses of undocumented families resulting in increased stress for the student and family.

The Board of Education has a responsibility to provide the necessary support services to enable these students to have a positive educational experience. Toward that end:

1. Each superintendent is asked to assign a designee on immigrant affairs. The designee will:

   - act as liaison with principals in matters related to immigrant students, both documented and undocumented.
   - coordinate district wide efforts.
   - monitor school based plans.
   - provide district wide staff development.

2. Each principal should designate one person to act as liaison on immigrant affairs to the superintendent's office. The designee will:

   - work with school committees (e.g. CSIP) to ensure that the needs of these students are met.
   - serve as an ombudsperson to immigrant students and their families.
   - facilitate the implementation of strategies to ease the transition of immigrant children.
   - work with admissions and guidance staff to initiate intervention services.
   - serve as a resource for other staff and the community.
   - attend citywide training on immigration law, resources and multicultural issues.
   - monitor program progress

3. Schools with immigrant students must ensure that the needs of these students are reflected in all school based planning, including:

   - identifying appropriate support services, resources and referral mechanisms and ensure the dissemination of this information to students and parents in the students' home language.
   - providing for parental involvement.
   - establishing linkages with community based organizations that have experience in the delivery of immigration services.

Questions related to this Regulation should be referred to the appropriate office listed below:

Director
Office of Guidance and Student Development
362 Schermerhorn Street
Brooklyn, NY 11217

Tel. (718) 935-4121

Director
Office of Access and Compliance
Division of High Schools
110 Livingston Street
Brooklyn, NY 11201

Tel. (718) 935-3415

Director
Office of Bilingual Education
131 Livingston Street
Brooklyn, NY 11201

Tel. (718) 935-3891

Administrator
Office of Alternative Services
Division of Special Education
110 Livingston Street
Brooklyn, NY 11201

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CHANCELLOR'S MEMORANDUM NO. 46 , 1987-88 June 14 , 1988

BOARD OF EDUCATION OF THE CITY OF NEW YORK
OFFICE OF THE CHANCELLOR

FEB 10 1989

TO: COMMUNITY SCHOOL BOARD PRESIDENTS, ALL SUPERINTENDENTS EXECUTIVE DIRECTORS AND HEADS OF OFFICES, AND PRINCIPALS OF ALL DAY SCHOOLS

FROM: Richard R. Green
Chancellor

SUBJECT: Admission to School of Immigrant Students

Introduction

The May, 1988 deadline for applying for legalization under the Immigration Reform and Control Act has passed. Many questions exist regarding its impact. However, please be aware that the new law will not change the rights of undocumented students to free public education. The 1982 U.S. Supreme Court ruling in Plyler v. Doe that students have the right to public education without regard to the immigration status of the student or the parent still stands.

Guidelines

All students seeking entrance into the public schools are to be admitted provided all requirements of Chancellor's Regulations A-110 (Admission to Prekindergarten, Kindergarten and First Grade, August 16, 1983) and/or A-120 (Admission to High School, March 18, 1982) are met. The immigration status of the student or parent will not be a criterion for admission.

Chancellor's Regulation A-145 (Admission of Alien and Foreign-born Students, October 1, 1979) clarifies the rights of alien and foreign born students to a public education. The Regulation states that "the monitoring of the immigration status of a child or parent is not the proper function of the New York City Board of Education." In that context, any questions from outside agencies regarding these students should be referred to the Office of Legal Affairs, (718) 935-3636. Schools are directed to continue to apply Chancellor's Regulation No. A-820 (Student Records: Access and Disclosure, November 1, 1979) to comply with requests for personal information about specific children.

Attached is an open letter, in several languages, to parents regarding their children's right to free public education. It is requested that every effort be made to disseminate the letter to all parents. Translations in other languages may be requested from the Office of Bilingual Education, (718) 935-3891.

Thank you for your assistance in this matter. Any questions regarding this memorandum, requirements for admission to school, or the Attachment should be addressed to Joshua Marquez, (718) 935-2681.

RRG:bm
Attachments

AN OPEN LETTER TO IMMIGRANT PARENTS

I want to welcome all of you to our schools. We're glad you're here Your children, starting from 5 years of age have a right to a free publi education. The school does not want to know the immigration status of your family. The school will not ask you for a "green card." And, your children may attend public school free until they are 21 or receive a diploma, whichever comes first.

Your family has other rights too:

*RIGHT TO MEDICAL TREATMENT - Publically funded hospitals are required to provide emergency medical services regardless of the patient's immigration status.

*RIGHT TO REFUSE ENTRY INTO YOUR HOME - You have the right to refuse to allow an immigration agent into your home unless the agent has a valid warrant, signed by a judge. But be aware that you may loose a benefit if the investigation is to verify your eligibility for a benefit. Find out why he/she is at your door. If the agent demands to see documents when entering your home with a warrant, the warrant must list the documents that should be shown.

*RIGHT TO REMAIN SILENT - If you are stopped on the street by an immigration or police officer, you should give your name but you have the right to remain silent about your immigration status or involvement in any crime. There is no need to show any documents. If you are arrested, you should insist on speaking to an attorney. (The INS will provide you with a list of organizations that may provide you an attorney.)

*RIGHT TO REFUSE TO SIGN ANY DOCUMENTS - You should not sign your name to any document offered by the INS without first speaking to an attorney. By signing a document, you may be giving up certain rights, or be agreeing to return to your country of origin.

*RIGHT TO CITY SERVICES - In 1985, the Mayor issued a memo stating that city employees were not to inform INS of the immigration status of any persons seeking city services. You have a right to police and fire protection and help with consumer fraud and landlord abuses.

REMEMBER, ALL CHILDREN ARE WELCOME IN OUR SCHOOLS. WE WILL NOT ASK YOU ABOUT YOUR IMMIGRATION STATUS. THAT IS OUR POLICY. THAT IS OUR PROMISE.

AN OPEN LETTER TO IMMIGRANT PARENTS

CARTA ABIERTA A LOS PADRES INMIGRANTES

Les quiero dar la bienvenida a nuestras escuelas. Tenemos mucho gusto de que ustedes estén aquí. Su hijos, desde la edad de 5 años tienen el derecho a una educación pública gratis. La escuela no quiere saber el estado de inmigrante de su familia. La escuela no les va a pedir su "green card-(tarjeta verde)". Sus hijos tienen el derecho de asistir a la escuela pública, gratis, hasta que cumplan 21 años o consigan un diploma, cualquiera que ocurra primero.

Su familia tiene también otros derechos:

* EL DERECHO AL TRATAMIENTO MÉDICO - Los hospitales públicos tienen que proveer servicios médicos de emergencia sin tener en cuenta el estado inmigrante del paciente.

* EL DERECHO DE NEGAR LA ENTRADA A SU CASA - Usted tiene el derecho de negar la entrada a su casa a un agente de inmigración a menos que tenga una autorización legal, firmada por un Juez. Pero tengan en cuenta que pueden perder un beneficio si la investigación es para verificar su elegibilidad. Es importante averiguar la razón que el/ella quiere verle a usted. Si el agente exige ver documentos al entrar a su casa con una autorización, estos documentos deben aparecer en la autorización.

* EL DERECHO DE PERMANECER CALLADO - Si usted está detenido por un agente de inmigración o un policía, usted debe dar su nombre, pero Ud. tiene el derecho de permanecer callado en cuanto a su estado de inmigrante o su implicación en un crimen. No es necesario mostrar sus documentos. Si usted está detenido, usted debe insistir a hablar con un abogado. (El INS les proverá con una lista de organizaciones que les proveen un abogado).

* EL DERECHO DE NEGARSE A FIRMAR DOCUMENTOS - Ud. no debe firmar su nombre a cualquier documento ofrecido por el INS sin hablar primero con un abogado. Por firmar un documento, es posible que ud. está rechazando algunos derechos o que ud. está aceptando volver a su país.

* EL DERECHO A LOS SERVICIOS MUNICIPALES - En 1985, el alcalde promulgó un memorándum que los empleados de la ciudad no deben informar al INS del estado de inmigración de cualquier persona necesitando la ayuda de los servicios de la ciudad. Usted tiene el derecho a la protección dadA por el departamento de policía y de fuego, y la ayuda con el abuso por los dueños de casa y el engaño al consumidor.

RECUERDENSE, TODOS LOS NIÑOS ESTÁN BIENVENIDOS EN NUESTRAS ESCUELAS. NO LES VAMOS A PREGUNTAR DE SU ESTADO DE INMIGRACIÓN. ES NUESTRA POLÍTICA. ES NUESTRA PROMESA.

KOREAN

AN OPEN LETTER TO IMMIGRANT PARENTS

이민 학부모님께 드리는 공개 서한

본인은 여러분들이 저희들 학교에 오신 것을 진심으로 환영하고자 합니다. 만나뵙게 되어 정말 반갑습니다. 여러분의 자녀들은 5살부터 무료로 공립교 교육을 받을 권한이 있읍니다. 학교 당국은 여러 학부모님들의 이민 상태를 알려고 하지 않습니다. 학교는 "그린카드" 제시를 요구하지 않습니다. 그리고, 여러분의 자녀는 고등학교 졸업장을 받거나, 무엇이든 먼저 이루어질 때까지 무료로 공립교 교육을 받을 수 있읍니다.

여러분의 가정은 또한 다음과 같은 권한을 갖고 있읍니다.

*의료 혜택을 받을 수 있는 권한 - 공공 자금 조달을 받고 있는 병원은 환자의 이민 상태와 상관없이 응급 의료 서비스를 제공하도록 되어 있읍니다.

*가택 침입 거부권 - 판사가 서명한 정당한 증서를 소지하지 않은 한 이민국 직원이 여러분의 가택을 조사하는 것을 거부할 권한을 지니고 있읍니다. 그러나 조사가 어떠한 혜택의 해당 자격을 증명하기 위한 경우인 경우에는 그 혜택을 상실할 수 있다는 것을 아셔야 합니다. 수사원이 여러분 댁에 온 이유를 알아 보십시오. 만약 증서를 소지한 수사원이 특정 서류 제시를 요구할 때는, 증서에 필요한 서류의 목록이 써 있어야만 합니다.

*묵비권 - 이민국 직원이나, 경찰관에 의해 거리에서 제지당하였을 때, 여러분은 이름을 밝혀야 하나, 여러분의 이민 상태나, 범죄 상관 여부에 관해서 묵비권을 행사할 수 있읍니다. 어떠한 서류도 보여줄 필요가 없읍니다. 만약 체포되었을 경우, 변호사에게 말하겠다는 것을 주장하시오. (이민국은 여러분께 변호사를 선정해 줄 수 있는 기관의 이름을 제공할 것입니다.)

*서류에 서명을 거부할 수 있는 권한 - 변호사에게 말하기 전에 이민국에서 제시하는 어떠한 서류에도 서명을 하지 마시오. 서류에 서명함으로, 여러분은 어떤 권한을 포기하거나, 여러분의 본국으로 돌아 가는 것을 승낙하게 됩니다.

*시제공 서비스를 받을수 있는 권한 - 1985년 시장은 시청 직원이 시 제공 서비스를 구하는 사람들의 이민 상태를 이민국에 통보하는 것을 금하는 메모를 발행하였읍니다. 여러분은 경찰, 소방 보호의 권한과, 소비자에 대한 사기 행위, 집주인 행패등에 도움을 받을 수 있읍니다.

여러분의 자녀들이 환영받고 있다는 것을 알아주십시오. 우리는 여러분의 이민 상태를 문의하지 않습니다. 이것이 우리들의 시책이며 약속입니다.

FRENCH

AN OPEN LETTER TO IMMIGRANT PARENTS

LETTRE OUVERTE AUX PARENTS IMMIGRANTS

Tout en me réjouissant de votre présence ici, je veux vous offrir un acceuil chaleureux dans notre système scolaire. Soyez le/la bienvenu(e)!

Je tiens à vous informer par la présente que votre enfant, dès l'âge de 5 ans, est bénificiaire d'une éducation publique gratuite. Aussi dois-je vous assurer qu' il est interdit aux autorités scolaires de vous interroger au sujet de votre status d'immigrant, la "green card." Sachez bien que notre système scolaire offre une éducation publique gratuite à quiconque âgé de moins de 21 ans et à quiconque n'a pas reçu son diplôme d'études secondaires (high school diploma).

Outre le droit de fréquenter une école publique dans les conditions suscitées, la loi américaine vous offre les droits suivants. Vous avez le droit de:

* RECEVOIR DES SOINS MEDICAUX- Les hôpitaux subventionnés par l'état ont pour devoir de dispenser les services de premiers soins sans se soucier du status de résidence du patient.

* REFUSER ACCES A VOTRE DEMEURE- Vous avez le droit de ne pas recevoir un agent du Département de l'immigration dans votre appartement à moins qu'il ait un mandat officiel signé d'un juge. Aussi, le mandat doit spécifier les documents à vérifier. Soyez avisé que cette vérification peut avoir but de justifier votre éligibilité à recevoir une subvention publique.

* GARDER LE SILENCE- Si vous êtes appréhendé par un agent du Département de l'immigration ou par un agent de police, soyez prudent de ne lui donner que votre nom et de ne divulguer aucune information au sujet de votre statut de résidence ou d'une allégation criminelle. Au cas où vous seriez escorté, insistez qu'on vous mette en contact avec un avocat. (Le Département de l'immigration, en cas de besoin, vous procurera une liste d'organisations civiques pouvant vous référer à un avocat.)

* REFUSER DE SIGNER TOUT DOCUMENT- N'apposez pas votre signature à aucun document émanant de l'Immigration sans avoir consulté un avocat. Votre signature peut, dans certains cas, représenter la forfaiture de vos droits ou encore, votre consentement à votre rapatriement.

* BENEFICIER DES SERVICES MUNICIPAUX- Selon un mémorandum signé par le Maire de la ville de New York en 1985, il est interdit aux fonctionnaires d'informer l'Immigration au sujet du statut de résidence d'aucune personne nécessiteuse d'un service public. Vous avez droit à la protection de la police et des pompiers, d'enregistrer vos doléances contre les contracts frauduleux et contre les abus des propriétaires d'immeubles.

RAPPELEZ-VOUS QUE NOTRE SYSTEME SCOLAIRE TEND LES BRAS A TOUS LES ENFANTS. NOUS NE TIENDRONS PAS COMPTE DE VOTRE STATUS DE RESIDENCE. QUE LA PRESENTE TEMOIGNE NOTRE LIGNE DE CONDUITE. QUE LA PRESENTE TEMOIGNE NOTRE PROMESSE.

HAITIAN

AN OPEN LETTER TO IMMIGRANT PARENTS

LÈT TOU LOUVRI POU PARAN SAN REZIDANS

Mwen vle fè w konnen tout lekòl piblik nan vil Nouyòk la poze gwo bèlantre pou w. Nou kontan anpil w rete nan vil Nouyòk la. Se pou sa, nou vle w pase anba gwo bèlantre sa a ak kè kontan, ak kè poze!

Mwen vle w konnen tou: tout timoun ki gen laj 5 kan gen dwa ale lekòl piblik gratis. Lekòl piblik yo pa gen okenn kesyon pou yo poze w sou kat rezidans ou (kat vèt la). Epitou, tout elèv ki poko gen on diplòm lekòl segondè, ki poko gen 21 nan kapab ale lekòl piblik gratis.

Fò w konnen tou ni w menm ni farmi ou gen lòt dwa. Paregzanp nou gen dwa:

* MANDE LASWENYAY LOPITAL- Lopital ki resevwa lajan govènman pou ede yo fonksyone oblije bay tout moun ki gen ka emèjennsi laswenyay, san yo pa mande yo kesyon sou kat vèt la (green card).

* REFIZE MOUN RANTRE LAKAY NOU- Si yon ofisye Depatman Imigrasyon pa gen on manda on jij siyen, nou gen dwa pa kite l antre lakay nou. Pafwa, se kèk benefis n ap resevwa yo vle wè si nou merite. Kenbe ofisye sa a nan pa pòt la jistan nou konnen ki sa manda a espesifye pou ofisye a tcheke lakay nou. Sonje tou, sa manda a espesifye a, se sa sèlman li ka tcheke.

* KENBE SILANS NOU- Si on ofisye Imigrasyon oubyen lapolis rete nou nan lari, nou gen dwa bay non nou sèlman, epi anyen ankò. Nou pa oblije di si nou gen kat rezidans lan, oubyen si nou te patisipe nan on krim. Nou pa bezwen montre okenn dokiman. Si yo ta arete nou, nou fèt pou mande on avoka menm lè a. (Dayè, Imigrasyon gen on lis òganizasyon ki ka fè nou jwenn on avoka.)

* REFIZE SIYEN DOKIMAN- Pa siyen okenn dokiman Imigrasyon san nou pa wè on avoka. Lè nou siyen on dokiman Imigrasyon, nou pran chans pou nou pèdi tout dwa nou, oubyen nou pran chans pou Imigrasyon voye nou tounen nan peyi nou.

* MANDE AJANS LETA SÈVIS- Mè vil Nouyòk la te di an 1985 ke okenn anplwaye leta pa gen dwa bay Depatman Imigrasyon enfòmasyon sou moun ki vin mande sèvis nan ajans leta. Se pou sa, nou gen dwa gen pwoteksyon lapolis ak pwoteksyon ponpye. Gen ajans tou ki ka ede nou lè magazin oubyen biznis ap tronpe nou, oubyen lè mèt kay ap fè nou abi.

SONJE KE LEKÒL PIBLIK YO POZE GWO BÈLANTRE POU TOUT ELÈV. LEKÒL YO PARE POU RESEVWA TOUT ELÈV AK DE BRA. NOU PA GEN OKENN ENTERÈ POU NOU POZE KESYON SOU KAT VÈT LA. LÈT TOU LOUVRI SA A REPREZANTE KONVIKSYON NOU. LÈT TOU LOUVRI SA A REPREZANTE PWOMES NOU!

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CHINESE

AN OPEN LETTER TO IMMIGRANT PARENTS

致移民家長们的一封公开信

我欢迎你们到我们的学校来。我们非常高兴你们在这裡。你们的子女从五岁开始就有权享受公立学校的教育。学校不需知道你们家庭的移民身份。学校也不会问你们宝贵的绿卡而你们的子女可以免费进公立学校直到他们满十一岁或得到中学文凭为止。

你们也可以享受以下各种权利：

医疗保险权利：公立医院不需供给警务医疗服务之病危人的移民身份。

有权拒绝他人进入住内：你有权不让移民官员进入住内，除非他具有住宅签名的合法逮捕证明。但你也必须小心。因为如果你不让福利调查人员进入你就会损失这种福利的机会。你可以问明白他来你家的原因，如果是移民官员要求看你的证件而他也具有合法的逮捕证，他也进了你的住内，那你可查明他所看的证件是否实在逮捕证。

有权保持沉默：如果你在街上被移民官员或警察阻止，你必需告知你的姓名，但你有权保持沉默不回答任何问题，任何有关你的移民身份或是否以前有犯罪的问题都可以不必回答。你不需拿出任何证件，你如果被逮捕，你在坚持要求跟律师商量。移民局会给你一张参考名单以便你找一名律师为你辩护。

有权拒绝在任何文件上签名：除非你预先与你的律师商量过。你不要让移民局给你的任何文件上签名，因为你签名之后，你可能就会放弃某种权利，或者应回到你去美国前的祖籍地点。

有权享受社会福利：1996年任何立法皆申明，立法者既是之法者所移民局有关任何求援之设计或住者的移民身份。你有权享受警察、消防、消费欺诈和房东房行为保障。

請記住，所有兒童都欢迎進入我们的學校，我们不会问你们的移民身份，這是我们的政策，這也是我们的无語——

IN OPEN LETTER TO IMMIGRANT PARENTS (GREEK)

ΑΝΟΙΚΤΗ ΕΠΙΣΤΟΛΗ ΠΡΟΣ ΤΟΥΣ ΜΕΤΑΝΑΣΤΕΣ ΓΟΝΕΙΣ

Σας καλωσορίζω όλους στα σχολεία μας. Χαιρόμαστε που είστε εδώ. Τα παιδιά σας, από 5 χρόνων και πάνω δικαιούνται δωρεάν δημόσιας εκπαίδευσης. Το σχολείο δεν θέλει να γνωρίζει την μεταναστευτική κατάσταση της οικογένειάς σας. Το σχολείο δεν θα ζητήσει "πράσινη κάρτα". Και τα παιδιά σας μπορούν να παρακολουθούν τα μαθήματα τους στο δημόσιο σχολείο μέχρι να γίνουν 21 ετών ή να αποκτήσουν το Δίπλωμα τους.

Η οικογένεια σας έχει και άλλα δικαιώματα:

* ΔΙΚΑΙΩΜΑ ΙΑΤΡΙΚΗΣ ΦΡΟΝΤΙΔΑΣ - Νοσοκομεία που παίρνουν δημόσια επιχορήγηση απαγορεύεται να παρέχουν τις πρώτες βοήθειες ανεξάρτητα από την μεταναστευτική κατάσταση του ασθενούς.

* ΔΙΚΑΙΩΜΑ ΝΑ ΑΡΝΗΘΕΙΤΕ ΤΗΝ ΕΙΣΟΔΟ ΣΤΟ ΣΠΙΤΙ ΣΑΣ - Έχετε το δικαίωμα να μην επιτρέψετε την είσοδο στο σπίτι σας κανενός αξιωματούχου της Μεταναστευτικής υπηρεσίας, εκτός και εάν έχει ένταλμα εισόδου υπογεγραμμένο από το Δικαστή. Αλλά προσέξατε γιατί μπορεί να χάσετε το δικαίωμα του ενδεχόμενου για νομιμοποίηση. Ζητήσατε να μάθετε τα ονόματα των αξιωματούχων. Εάν σας ζητήσει να του παρουσιάσετε έγγραφα βεβαιωθείτε ότι αυτά που ζητά είναι καταχωρημένα ονομαστικά στο υπογεγραμμένο ένταλμα εισόδου.

* ΔΙΚΑΙΩΜΑ ΝΑ ΜΗΝ ΜΙΛΗΣΕΤΕ - Εάν σας σταματήσουν στο δρόμο ένας αξιωματούχος της μεταναστευτικής υπηρεσίας ή ένας αστυνομικός έχετε το δικαίωμα να μην αποκαλύψετε την μεταναστευτική σας

• κατάσταση ή οποιο άλλο ενός ατόμου δικαίωμα εκτός του ονόματος σας δεν απαιτείται να δώσετε κανένα έγγραφο. Εάν συλληφθείτε, να επιμείνετε να μιλήσετε σε δικηγόρο. (Η Μεταναστευτική υπηρεσία θα σας δώσει μία κατάσταση από οργανισμούς που θα σας παρέχουν έναν δικηγόρο.)

* ΔΙΚΑΙΩΜΑ ΝΑ ΑΡΝΗΘΕΙΤΑΙ ΤΗΝ ΥΠΟΓΡΑΦΗ ΟΠΟΙΟΥΔΗΠΟΤΕ ΕΓΓΡΑΦΟΥ - Δεν θα πρέπει να υπογράψετε το όνομα σας σε κανένα έγγραφο που θα σας δώσει η Μεταναστευτική υπηρεσία χωρίς πρώτα να μιλήσετε με έναν δικηγόρο. Υπογράφοντας ένα έγγραφο μπορεί να απωλέσετε ουσιώδη δικαιώματα ή να συμφωνήσετε να επιστρέψετε στην χώρα της καταγωγής σας.

* ΔΙΚΑΙΩΜΑ ΤΗΛΕΦΩΝΟΥ ΤΗΣ ΠΟΛΕΩΣ - Το 1985 ο Δήμαρχος εξέδωσε ένα υπόμνημα στο οποίο αναφέρεται ότι οι υπάλληλοι του Δήμου δεν πρέπει να δίδουν πληροφορίες στη Μεταναστευτική υπηρεσία

[illegible] ΑΥΤΗ ΕΙΝΑΙ Η ΤΑΣΗ ΜΑΣ

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"This manual is an extraordinarily valuable reference on the right of access of immigrant children to public schools. It provides an excellent overview of the law in a unique and extremely useful manner. I recommend it very highly to all educators, advocates, and attorneys."

"Every educator, advocate, and school lawyer should rely on this manual for guidance. It is a valuable resource on issues and practices involving the *Plyler* right of access for undocumented and documented immigrant students. It addresses prohibited and recommended school practices in a clear and concise manner."

A publication of

The Immigrant Student Program
National Coalition of Advocates for Students
100 Boylston Street
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